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Gp 1645

EXPRESS MAIL NO.: EL 500 576 613 US

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED 11/13/02

Application of: W. James Jackson

NOV 13 2002

Application No.: 09/677,752

Group Art Unit: 1645

TECH CENTER 1600/2900

Filed: October 3, 2000

Examiner: V. Ford

For: CHLAMYDIA PROTEIN, GENE  
SEQUENCE AND USES THEREOF

Attorney Docket No.: 7969-087-999

**PETITION UNDER 37 C.F.R. § 1.10(c) TO CORRECT FILING DATE  
TO ACCORD WITH U.S.P.S. DEPOSIT DATE OF RCE  
AND CONCURRENTLY FILED DOCUMENTS**

Assistant Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231

Sir:

On October 15, 2002, in accordance with the Rules of Practice for filing correspondence by "Express Mail" (37 C.F.R. § 1.10(a)), Applicants deposited a Request for Continued Examination ("RCE") and related documents (hereinafter, "the deposited correspondence") with the United States Postal Service (U.S.P.S.). Applicants used the U.S.P.S. "Express Mail Post Office to Addressee" service and paid sufficient postage therefor. The Express Mail Label No. was EL 477 037 294 US.

The deposited correspondence, a true copy of which, except for a copy of Exhibits 1-17 and References BO-BW, is attached as Exhibit 1 hereto, consisted of the following:

- 1) a return postcard ("Post-Card Receipt"), which on one side had an itemized list of the papers mailed on October 15, 2002, and Express Mail Label No. EL 477 037 294 US;
- 2) a Request for Continued Examination (RCE) Transmittal, including authorization for payment of RCE filing fee, extension of time fee, and fee for Supplemental Information Disclosure Statement; and

- 3) a Petition for Extension of Time Under 37 C.F.R. §1.136(a) for 2 months together with authorization for the required fee;
- 4) a Submission Under 37 C.F.R. §1.114 with Amendments, Exhibits 1-17, Appendix A, a copy of the pending claims;
- 5) a Supplemental Information Disclosure Statement Under 37 C.F.R. §1.56; and
- 6) a Supplemental PTO-1449 Form and copy of References BO-BW<sup>1</sup>.

It has recently come to the attention of Attorneys for Applicants that the United States Patent and Trademark Office ("USPTO") has returned the Post-Card Receipt of the deposited correspondence showing a stamped receipt date of October 16, 2002 instead of October 15, 2002, see copy attached hereto as Exhibit 2.

As a result, Applicants hereby petition the Commissioner under 37 C.F.R. §1.10(c) to correct the filing date of the deposited correspondence and to accord the correct date of filing in the USPTO as the U.S.P.S. deposit date of October 15, 2002. The facts in support of this petition are provided below.

**1. This petition is being filed promptly in accordance with 37 C.F.R. § 1.10(c)(1)**

Attorneys for Applicants recently became aware that the USPTO had accorded in error a receipt date of October 15, 2002 of the deposited correspondence.

This petition is therefore being filed promptly after Attorneys for Applicants became aware that the USPTO had erroneously accorded the filing date of October 15, 2002, instead of October 15, 2002, in accordance with 37 C.F.R. § 1.10(c)(1).

**2. The Express Mail Mailing Label No. EL 477 037 294 US was placed on the deposited correspondence in accordance with 37 C.F.R. § 1.10(c)(2)**

As demonstrated by the true copy of the deposited correspondence attached as Exhibit 1, the Request for Continued Examination (RCE) Transmittal, the Petition for Extension of Time Under 37 C.F.R. §1.136(a), the first page of the Statement Regarding Permanence and Availability of Deposited Microorganisms and Corroboration Regarding Described Microorganisms, the first page of the Supplemental Information Disclosure

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<sup>1</sup> In order to not over burden the record, a copy of Exhibits 1-17 and References BO-BW is not enclosed herewith.

Statement Under 37 C.F.R. §1.56, the Supplemental PTO-1449 Form, and the Post-Card Receipt itemizing the correspondence contents all included the Express Mail Label No. EL 477 037 294 US at the top right hand corners of those sheets. As a result, the Express Mail Label No. EL 477 037 294 US was placed on the deposited correspondence prior to it being deposited with the U.S.P.S. in accordance with 37 C.F.R. § 1.10(c)(2).

**3. The necessary supporting documentation is attached to this petition in accordance with 37 C.F.R. § 1.10(c)(3)**

As indicated above, a true copy of the deposited correspondence, except for a copy of Exhibits 1-17 and References BO-BW, is attached as Exhibit 1 hereto and demonstrates that the deposited correspondence showed the relevant Express Mail Label No. EL 477 037 294 US. In addition, in accordance with 37 C.F.R. § 1.10(c)(3), a true copy of the Post Office to Addressee Express Mail Mailing Label No. EL 477 037 294 US is attached hereto as Exhibit 3. In the Date In box, the Express Mail mailing label clearly shows the “date in” as being the requested filing date of October 15, 2002. The Express Mail mailing label also bears a U.S.P.S. stamp verifying October 15, 2002 as the date of deposit with the U.S.P.S.. The mailing label additionally indicates that the sender is Attorneys for Applicants, Pennie & Edmonds LLP, 1155 Avenue of the Americas, New York, NY 10036; that the recipient is the Assistant Commissioner for Patents, Washington DC, 20231; and that sufficient postage of \$72.35 was paid.

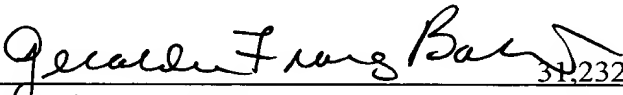
Furthermore, a true copy of the Express Mail Certification dated October 15, 2002 and signed by an employee of Attorney for Applicants, Ismael Maldonado, is attached hereto as Exhibit 4. The Express Mail Certification indicates that the deposited correspondence corresponding to the attorney name Baldwin and attorney docket no. 7969-087-999 table entry of that document, was inserted into the Express Mail package corresponding to the Express Mail Label No. EL 477 037 294 US, and that this package was deposited with the U.S.P.S. using “Express Mail Post Office to Addressee” service on October 15, 2002.

Finally, as already indicated, the copies of the deposited correspondence in Exhibit 1, the returned stamped Post-Card Receipt in Exhibit 2, the Post Office to Addressee Express Mail Mailing Label No. EL 477 037 294 US in Exhibit 3, and the Express Mail Certification in Exhibit 4 are all true copies of the respective original documents.

Accordingly, Applicants respectfully submit that all of the requirements of 37 C.F.R. §§ 1.10(a) and (c) have been fully met and complied with, and that therefore the deposited correspondence in Exhibit 1 – including the Request for Continued Examination contained therein – should be accorded a filing date of October 15, 2002, the date of deposit of that correspondence as Express Mail with the U.S.P.S.. It is believed that no fee is required in connection with this petition. However, should the Patent Office determine otherwise, please charge any necessary fee to Pennie & Edmonds LLP deposit account no. 16-1150.

Respectfully submitted,

Date: November 5, 2002

  
Geraldine F. Baldwin 31,232  
(Reg. No.)

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Enclosures